

SERVICE DATE – LATE RELEASE NOVEMBER 23, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42084

CF INDUSTRIES, INC. v. KANEB PIPE LINE PARTNERS, L.P.
and KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.

Decided: November 23, 2004

In a decision served August 12, 2004, the Board ordered Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, Kaneb), to reduce the rates charged to CF Industries, Inc. (CFI), for the pipeline transportation of anhydrous ammonia to the level the Board previously prescribed in CF Industries Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served May 9, 2000), aff'd sub nom. CF Industries, Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001) (Koch).

The Board also noted in its August 12 decision that although the prescription was still in effect, Kaneb's purchase of the pipeline may have produced changed circumstances sufficient to warrant its vacation. In order to determine whether the factual underpinnings of the Koch prescription are still valid, the Board asked for additional evidence and established a procedural schedule (which was subsequently modified) governing its submission. The evidence sought included: a list of the assets Kaneb purchased from Koch and an itemized valuation of these assets; a comparison to the assets that the Board examined in Koch; the complete Koch/Kaneb asset purchase and sale agreement; a statement setting forth facts sufficient to establish whether or not this was an arm's length transaction; and any other information relevant to Kaneb's claim of materially changed circumstances.

Pursuant to the Board's August 12 decision, Kaneb filed its opening evidence with the Board on September 13, and CFI filed its reply evidence on October 7. Kaneb submitted its rebuttal on October 15.

On October 6, 2004, CFI filed a motion asking the Board to compel Kaneb to respond to CFI's discovery requests. CFI states that Kaneb has refused to comply with CFI's requests to answer interrogatories, provide admissions, and produce certain documents. CFI, generally, seeks discovery of materials related to Kaneb's purchase of the pipeline as well as information regarding Kaneb's anticipated future operations of the line. CFI maintains that its requests seek to elicit information relevant to the issues before the Board, and that due process and Board regulations governing discovery provide CFI with a right to the materials it seeks here.

Kaneb filed its reply to the motion to compel on October 12, 2004. Although Kaneb raises various arguments in opposition to CFI's motion, such as that the Board already has a sufficient record upon which to decide whether or not to vacate the prescription, one of its primary contentions is that the compressed schedule the Board established in this proceeding demonstrates that the agency did not contemplate discovery here, and that none is permitted.

CFI is correct that it has a right to engage in discovery. The Board's regulation at 49 CFR 1114.21(a)(1) provides in part that a party may obtain discovery in any matter that is relevant to the subject matter in a proceeding and that is not privileged. Moreover, 49 CFR 1114.21(b) provides that there is no need for prior Board approval. CFI's right to discovery, of course, has limits. Under 49 CFR 1114.21(a) and (c), discovery must be "relevant to the subject matter involved in a proceeding." The requirement of relevance means, generally, that the information sought might be able to affect the outcome of a proceeding. Furthermore, under 49 CFR 1114.21(c), discovery must not unduly burden a party or raise issues untimely or inappropriate to the proceeding. It is clear that at least some of the requests Kaneb has refused to answer may be germane to the issues before the Board, while, similarly, some may be beyond the scope of those issues.

With this in mind, the parties should discuss and attempt to resolve the disputed discovery requests. As a general rule, the Board expects parties to try to resolve their differences on their own before involving the Board. There is no indication that has occurred here. If, after making a good faith attempt to resolve any disputes over the particulars of the discovery requests, the parties are still at an impasse, they should notify the Board in writing by December 10, 2004. At that point, should it still be necessary,¹ the Board will intervene and decide whether a discovery conference will be conducted prior to the issuance of a final decision concerning CFI's motion to compel discovery.

It is ordered:

1. The parties shall engage in the discussions outlined above in an attempt to resolve their discovery disputes.
2. Parties shall report to the Board by December 10, 2004, on whether the discovery disputes in CFI's motion to compel have been resolved.

¹ On November 10, CFI filed a motion asking the Board to appoint a mediator to facilitate settlement negotiations between the parties. CFI believes that a Board appointed mediator could help reinvigorate faltering negotiations and settle the case. Kaneb has not yet replied to CFI's motion.

3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary